उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक M.C.C.No. 192/06 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

M.C.C. No. 192/2006

APPLICANT Ramesh Kumar Jain, aged about 50 years, son of Late Shri Hiralal Jain, R/o. Pulgaon Naka, Durg, carrying on business in the name & style of "R.K. Transport Company" as Sole Proprietor

Versus

RESPONDENT M/s. Bharat Aluminium Company Ltd. A Company, through its President, Aluminium Bhawan, Korba, Distt. Korba (C.G.)

12-4-2007

Shri Anand Tiwari, Advocate for the applicant.
Shri Abhisek Sinha, Advocate for the non-applicant.

Heard.

Applicant has preferred this application under Section 11(6) of Arbitration and Conciliation Act, 1996 for appointment of Arbitrator.

Case of the applicant is that an arbitration agreement dated 6-12-1999 was entered into between the applicant and non-applicant for a period of 18 months which was subsequently extended till 31st March, 2002. The contract agreement was entered into between the parties for the work of mining and transportation of Bauxite from Menpat Mines to Aluminium Plant, BALCO, Distt. Korba. The period of contract has come to an end with effect from 31st march, 2002, however full and final payment towards the work performed by the applicant has not been made to the applicant despite several applications for the same. The

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M.C.C.No. 192/06

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

applicant vide his letter dated 22-8-2005 (Annexure A-2) raised a particular dispute and called upon non-applicant to appoint arbitrator as per Clause 9 of the Arbitration Agreement of Annexure A-1. However, the non-applicant vide their reply of Annexure A-3 dated 20-9-2005 rejected the prayer and refused to appoint the arbitrator as requested and instead, invited authorized representative of the applicant for discussions and settlement. Only on failure of the discussions, his request for appointment of Arbitrator was to be considered.

Learned counsel for the applicant submits that since the non-applicant was duty bound to appoint arbitrator for settlement of the dispute regarding the arbitration agreement after request made by the applicant for the same and since the non-applicant has failed to appoint arbitrator in terms of the agreement within one month, a case for appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 is made out.

On the other hand, learned counsel for the applicant relies upon Annexure A-3 and orally disputed the claims raised by the applicant in the petition. However it has not been disputed that there is an agreement between the parties which stipulates arbitration clause No. 9 and in pursuance thereof, a dispute has arisen between the parties; and despite service of notice made by the applicant requesting the non-applicant for appointment of

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Arbitrator, appointment of Arbitrator could not be made within the stipulated period.

I have heard learned counsel for the parties. I have perused the record including the Arbitration Agreement of Annexure A-1. In my considered opinion, a case for appointment of Arbitrator is made out.

Learned counsel for the parties submit that they have no objection if Hon'ble Shri Justice S.C. Pandey, former Judge of High Court of Madhya Pradesh at Jabalpur is appointed as Arbitrator in the present case.

Therefore, I hereby, with the consent of the parties, appoint Hon'ble Shri Justice S.C. Pandey, former Judge of High Court of Madhya Pradesh at Jabalpur, subject to his consent.

The Hon'ble Arbitrator may settle his terms and conditions and remuneration.

Registry to intimate Hon'ble Shri Justice S.C. Pandey, former Judge of High Court of M.P., Jabalpur, about his appointment as Arbitrator and to send all the papers along with address of the parties.

Parties are also directed to approach Hon'ble Shri Justice S.C. Pandey, who is presently residing at South Civil Lines, Near Gun Carriage Factory, Chungi Chowki, Jabalpur (M.P.) and to submit papers and to take part in arbitration proceedings.

M.C.C. is accordingly disposed of.

Sd/-
Dhirendra Mishra
Judge

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